IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 652 of 2003

UDAILAL

V/S

SEWA SADAN BHILARA

Mr. RAMESHWER CHOUHAN, for the appellant / petitioner

Mr. SANDEEP SARUPARIA, for the respondent

Date of Order : 17.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This revision has been filed against the judgment and decree of the learned Addl. District Judge No.1, Bhilwara dt. 21.1.2003, decreeing the plaintiff's suit for possession, filed under Section 6 of the Specific Relief Act.

The facts of the case are, that the plaintiff filed the present suit, alleging interalia, that the land in question described in para-1 of the plaint is bound on all four sides by 5ft. high boundary wall, and was in possession of the plaintiff, and that till 11.1.1998 it continued to be in possession under lock and key of the plaintiff institution. It is then alleged that in the midnight intervening 11.1.1998 and 12.1.1998 the defendant in association with some antisocial element demolished the western wall, and forcibly encroached upon the land in

question, and deposited fuel and fodder. It is also alleged that the employee of the society intimated about this act, and written F.I.R. was lodged on 12.1.1998. However, no action was taken by the police authorities. Then, another report was got lodged through intervention of the Superintendent of Police on 14.1.1998, being F.I.R. No. 10/98. Thus, it is alleged that the defendant has illegally dispossessed the plaintiff, and therefore, the plaintiff is entitled to get back the possession, under Section 6. This suit was filed on 10.7.1998.

The defendant petitioner contested the suit. The description of the property, and its boundaries were admitted, and it was pleaded that the plot is of ownership and possession of the defendant, and that, the defendant has constructed the wall. The plaintiff had never been in possession, nor had any lock thereon. It was maintained that the defendant never demolished the wall, on the date as alleged. The defendant is continuing in old possession of the property. It is also alleged that in the F.I.R. after investigation challan was filed for the offence under Sections 447 and 427 I.P.C. However, the learned Judicial Magistrate, Kotri vide judgment dt. 25.11.1999 acquitted the defendant. Interalia with this, it is also alleged, that the suit property situated in 1/4th part of Araji no. 1059 measuring 4 bighas & 7 biswas, belonged to the defendant, and the plaintiff has nothing to do with the

land.

The learned trial court, after holding full dressed trial, found issues no. 1 and 2 in favour of the plaintiff, and concluded, that the defendant's evidence has not sufficiently rebutted the plaintiff's evidence, about the plaintiff being in possession, and being the owner, and having constructed 5ft. high wall, about the property being under lock and key of the plaintiff upto 11.1.1998. It was also found that from the evidence of Shyam Sunder and Kanhaiyalal, it is established, that on the night intervening 11th & 12th Jan. 1998 the defendant forcibly acquired possession. Regarding criminal case, it was found, that it has not been found in the judgment that a false report was lodged, rather the defendant was acquitted by giving benefit of doubt. Then deciding issue no. 5, it was found, that the defendant's own witnesses have admitted, that the defendant is in possession of 2 ¼ bighas of land, and rest of the land has gone to Panchayat, which has subdivided it into plots. In substance, meaning thereby, that land no more retains the character of being the agricultural land.

Assailing this judgment and decree, the present revision has been filed.

Learned counsel for the respondent reminded me of

the judgment of Hon'ble the Supreme Court, in Sanjay Kumar Pandey Vs. Gulbahar Sheikh, reported in (2004) 4 SCC-664, holding, that the scope of interference in revision against the decree passed in suit, under section 6 of Specific Relief Act, is also restricted by Section 115 C.P.C. to jurisdictional error.

I have heard learned counsel for the parties, and have gone through the record. Even forgetting all bounds, and even after going through the evidence, I find that all that has been alleged by the defendant, while in the witness box is, that the land is being cultivated since the time of his ancestors, and till the date. Significantly this is not the pleading in the written statement, about the land being in ancestral cultivation, and then, the defendant has not said a word about his having constructed 5 ft. high wall, or having not demolished the wall. It is a different story, that in a suit under Section 6 of the Specific Relief Act, title is not relevant, and the only fact required to be seen is, as to whether the plaintiff has been dispossessed, otherwise than by due process of law, within a period of six months, since before the date of filing of the suit.

In my view, the learned trial court has properly examined, scanned, and appreciated evidence, and has rightly decided the issues as above. The findings do not

suffer from any jurisdictional error. The revision petition thus has no force, and the same is dismissed. Parties are left to bear their own costs.

(N P GUPTA),J.

/Sushil/